IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2046 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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UNITED INDIA INSURANCE CO.LTD. - Appellant

Versus

BIJAL VASRAM RABARI AND OTHERS – Respondents

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Appearance :
MS HINA DESAI for the Appellant.
MR JAGDISH H MEHTA for Respondents : 1 - 2.
NOTICE SERVED for Respondent : 3.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 19/12/2007

ORAL JUDGMENT

1. This is an appeal preferred by the United India

Insurance Company Limited under Section 30 of the Workmen's Compensation Act against the judgment and order dated 29-09-2006 passed by the Commissioner, Workmen's Compensation, Labour Court, Jamnagar in WCF No. 28 of 1993 . The learned Judge awarded the amount of Rs.78,088/- towards the compensation to the claimants and Rs.39,044/- towards the penalty with interest at the rate of 6% from 08-04-1988. The owner – respondent No. 1 is imposed the penalty of Rs.39,044/-. As short question with regard to payment of interest is involved, by consent of learned Advocate for both the sides, the Record and Proceedings are not called for nor the details of incident, the involvement of vehicle in the accident and liability of Insurance Company is discussed exhaustively.

2. Learned Advocate Ms. Hina Desai appearing on behalf of the appellant - Insurance Company submitted that the only question which requires to be decided by this Court is whether the learned Judge was justified in awarding compensation to the claimants to the tune of Rs. 78,088/- from 08-04-1988 at the rate of 6%. She further submitted that the Insurance Company was served with the notice on 07-08-2001 and the appearance on behalf of the Insurance Company was filed on 20-09-2001 and, therefore, the learned Advocate submitted that the learned Judge ought to have awarded interest from 20-09-2001 to the claimants at the rate of 6%. Save and except this submission, no other submission was canvassed by the learned Advocate on behalf of the Insurance Company.

3. Learned Advocate Mr. Jagdish Mehta representing

the claimants fairly submitted that it is true that the incident in question took place on 22-03-1986 and the deceased was employed in the rickshaw bearing No. GJZ 1949 which was of the ownership of respondent No. 1. The deceased sustained fatal injuries on 22-03-1986 when it turned turtle near Kalawad bye-pass, Jamnagar. The distraught heir, thereafter, preferred the claim petition and the learned Judge, after recording the evidence, held that the Insurance Company is liable to pay compensation to the tune of Rs. 78,088/- and further an amount of Rs. 39,044/- as penalty from 08-04-1988 at the rate of 6%. However, it is held by the learned Judge that the amount of Rs. 39,044/- imposed as penalty on the respondents be paid by the owner of rickshaw, and the Insurance Company was not fastened with the liability to pay the penalty. The learned Advocate further submitted that the notice to the Insurance Company was served on 07-08-2001 and the appearance was filed on behalf of the Insurance Company on 20-09-2001. However, the order of awarding interest passed by the learned Judge cannot be said to be illegal or improper and, therefore, the learned Advocate submitted that the contention raised by the learned Advocate on behalf of the Insurance Company deserves to be rejected.

4. Heard Ms. Hina Desai for the appellant – Insurance Company and Mr. Jagdish Mehta for respondent Nos. 1 and 2 at length and in great detail. Though the penalty is imposed on the owner of the autorickshaw, who is served, no one has appeared on behalf of the autorickshaw owner.

5. In view of the aforesaid facts and circumstances and on perusal of the judgment rendered by the learned Judge, it

becomes clear that the incident in question took place on 22-03-1986 when the deceased died in a vehicular accident. The accident took place near Kalawad bye-pass, Jamnagar when the rickshaw which he was driving turned turtle and he succumbed to the injures. The claimants, therefore, filed the claim petition claiming compensation from the Insurance Company. The Insurance Company was joined as a party on 05-02-1998. After joining the Insurance Company in 1998, the notice was served to the Insurance Company on 07-08-2001. Immediately after the service of notice, the Insurance Company was represented on 20-09-2001. Therefore, considering the aforesaid aspects, the Insurance Company, in my considered view, can be fastened with the liability to pay interest at the rate of 6% on the awarded amount of Rs. 78,088/- from 20-09-2001 and not from 08-04-1988.

6. Respondent No. 1, who is the owner of the vehicle, is imposed penalty to the tune of Rs. 39,044/- and the Insurance Company is not fastened with the liability to pay the penalty. Therefore, these observations, in my view, do not require to be disturbed and the Insurance Company would be liable to pay the interest on the awarded amount of Rs. 78,088/- from 20-09-2001 instead of 08-04-1988 at the rate of 6%.

7. In view of the foregoing discussion, I pass the following order:

ORDER

The appeal is party allowed. The judgment and

order dated 29-09-2006 passed by the Commissioner, Workmen's Compensation, Labour Court, Jamnagar in Workmen's Compensation Case Fatal No. 28 of 1993 is modified to the extent as indicated above. The appeal stands disposed of accordingly. Decree to be drawn in terms of the order passed in this appeal.

[H. B. ANTANI, J.]

/shamnath